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OIFP Prosecutions Prove Corrupting Influence of “Runners” on Health Care System



OIFP's

Prosecutions Prove

Corrupting Influence

of "Runners"

on Health Care System

by John J. Smith, Jr.

Since your automobile accident last month, you have been treating with a medical provider around the corner from your home. While you are waiting to be taken back to a treatment room, the provider's phone rings and you overhear an exchange between the provider and a woman on the other end of a speaker phone:

Woman:
We're playing phone tag.

Doctor:
Listen, why don't you send that patient in and I'll talk to you later in person.

Woman:
Okay, my love.

Doctor:
I'll definitely be in.

Woman:
I'm sending two in, ok?

Doctor:
Oh, you're a sweetheart.

Woman:
Ok.

Doctor:
Thank you very much for thinking about us.

As your treatment concludes and you leave the provider's office, a woman, whom you assume to be another patient, is entering the office. You go about your business for the rest of the day, and don't give a second thought to either the odd snippet of conversation you overheard or to the person who entered the provider's office as you departed.

Unbeknownst to you, however, the woman who entered the provider's office as you left, is the same person whose voice was on the other end of



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the speaker phone as you awaited treatment. Now, in your absence, their conversation continues:

Woman:

How you doing, sweetheart?

Doctor:

I thought you lost me and didn't love me anymore.

Woman:

How are things? Good?

Doctor:

How you doing? You look good. Thank you for referring those patients in. I appreciate that. Were they both in the same accident or separate ones?

Woman:

No, same one.

Doctor:

We can send them to an attorney, alright?...Just give me a couple of weeks and I will...

Woman:

Even with the attorney?

Doctor:

Even with the attorney. It's different, it's different, it's different with all the pre-cert [Pre-Certifications]...So I owe you two and?

Woman:

No, you said to me three, you were going [to] give me one and two later.

Doctor:

It's two fifty, that's all I have in my pocket right now.

Woman:

You owe me!

Doctor:

I owe you fifty...

Woman:

Ok, you owe me fifty and three fifty for each of the guys...

Doctor:

Three fifty each?

Woman:

Yep.

Doctor:

First of all V. is not coming in.

Woman:

M. said Friday was the last day he came in.

Doctor:

Yeah, he came. He says there's nothing wrong. We can't, we can't do it. We'll end up in jail if we do. The new days with insurance companies, tells us, they say, what's wrong with the patient. The patient says there is nothing wrong with them. We don't, we can't, we can't do that.

Woman:

And he's saying there is nothing wrong with him?

Doctor:

Yeah, he hasn't been in here since. He came in four times; he came in ten times and he has not been here since, since last month. I can't, I'm gonna lose money on that. There's no way he makes three fifty on that. The other one looks good, coming in frequently, but he's on vacation in Puerto Rico.

Woman:

Let me ask you something, suppose I talk to V.?

Doctor:

It's not gonna work, you see, it's the new stuff, the new stuff. It's not like usual.

Woman:

No, I know. I know.

Doctor:

Before you just walk in, write your name, and get out. Now it's all pre-certification. The insurance companies investigate everything. They spend a lot of money, the doctors examine every patient...But, you know, I tell the doctor whatever the patient says that's it. I try not to treat the patient anymore if he says there's nothing wrong with him. You know why?

Woman:

I know, my doctor used to tell me, "Hey, he said nothing hurts." I said, "I'll take care of him."

Doctor:

I don't want my name on the front page of *The Star Ledger* and that's what's gonna happen now. They call it fraud. Fraud is very serious and you know what, when the f___ing police come through the f___ing door, he'll be talking like a parrot about you and me.

Woman:

Who?

Doctor:

If somebody, if the police come through the door and they say, "Listen you're coming in here and saying there's nothing wrong with you, why you treating?"

Woman:

There's no way of getting?

Doctor:

There's no f___ing way! And I don't want it. I don't want them in my door. I can't treat someone if there is nothing wrong with them.

Woman:

Que stupido, uh! How the hell does he expect to get a lawsuit? Stupid.

Doctor:

But listen, I can't give you three fifty for every f___ing patient, you know that?...When he comes back the next time, the insurance companies, we try to get them in two times a week, actually, yeah, the insurance company will treat him one more time and that's it. As per...they tell us how to treat them and we can't. We have to pretend everybody is an investigator that walks through the door.

Woman:

Oh, yeah, definitely.

Doctor:

...Before, before I made money. Now we're just trying to make things work; we're just trying to pay bills. It's different, it's different.

Woman:

Ok...

Doctor:

And I have other doctors too, that we have...

Woman:

If V. come in, just discharge him, if he comes in the next time.

Doctor:

J.'s good, we keep going with J. J.'s good...

Woman:

Ok.

Doctor:

Yeah, we got to do it...cause we're gonna be in business here and we're gonna be talking ten years time, you and me, you know that?



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Woman:

I hope so.

Doctor:

Yeah, you got any more juicy stuff for me?

Woman:

No, I was gonna say, why don't you stop the guy that you saw had an accident today. Can you do that?

Doctor:

He spun off the road. I was doing 70 miles an hour, spun off, you know, they got a big divider like this, but it's all woods.

Woman:

Where were you?

Doctor:

I was on 78 coming eastbound, way out. There were cops everywhere.

Woman:

Oh no, no, no. You can't.

Doctor:

Yeah, if it was local, I'd get out of the car, sure.

Woman:

(Laughing)

Doctor:

Are you kidding me, it's an opportunity, soliciting business, but you know it's not really bad. No, I don't think it is, is it? That's probably legal?

Woman:

Yeah, I know. They always used to do that, that's the way they have these people out there. They have them standing in front of the house, "Hey, you injured? I got a doctor for you." (Laughing)

Doctor:

I know.

Woman:

Well, let me see what comes up.

Doctor:

The secret is to stay on top of it before you can say, "I gave you a name." Now you have to stay on top of these son of bitches, "that's my job right now, I'm here, they treat the patients, do the paperwork, I'm making sure they do everything per..."

Woman:

By the book.

Doctor:

By the book, 'cause if they don't...they come in once in a while, insurance companies will not pay. I could treat them forever, we're not getting paid ...You got more for me?

Woman:

Yeah, this is the situation...This is the car number one and happens to be the same last name of the other driver. It may seem they're all the same family, but they're not family, Ok?

Doctor:

That could be suspicious! ... They could investigate this! ... I'll tell you what, I'll take it only if an attorney will take it ... That's two and a half, that's for...

Woman:

Two and a half? It was three and a half. What's up?

Doctor:

No, it's two and a half.

Woman:

No, no, no. This is what you did to me last time.

Doctor:

For K.H., alright, I'll give you three.

Woman:

That's what you did to me last time.

You knocked me down.

Doctor:

No, I give everybody the same price ... Tomorrow I got lunch with this girl, she's an attorney, and I'll send her that patient. She's a good attorney, she fights like a dog.

By now, it is obvious that the woman whom you assumed to be a patient did not come to the provider's office simply because her back was aching. Rather, she is working for your medical provider. She is what is known in law enforcement and insurance circles as a "runner." In return for an illegal kickback or "referral fee," she procures people who are injured, or purportedly injured, in an accident, as patients for medical providers or as clients for lawyers who represent injury claimants.

While you mistakenly assumed the woman to be a patient of your medical provider, the medical provider was also mistaken. The woman he believed was a "runner," was actually cooperating with the Office of the Insurance Fraud Prosecutor (OIFP) in an undercover insurance fraud investigation. And the conversations to which you have just been privy were taken directly from a transcription of those conversations, which were secretly recorded by OIFP investigators.

It may surprise you to learn that the medical provider in this case considers patient "J" to be a good patient, not because he is responding well to therapy, but because he keeps returning for treatments. It may surprise you to hear your medical provider say he "tries" not to treat patients anymore if they say they are not really injured and do not really need to be treated. Perhaps hearing a medical provider say this causes you to wonder whether some patients might even lie about their injuries?

Perhaps you wonder whether "runners," medical providers, and lawyers

ever pretend not to know a patient or client may be lying about his injuries, or about continuing to need medical care, so they can submit insurance claims? Perhaps it surprises you to hear the medical provider in this case say he would not take a case unless an attorney also took it? Can it possibly be that the provider believes the lawyer is more capable of diagnosing a patient's injuries than the provider himself?

It may come as a surprise to you that the medical provider and the "runner" discuss how much money the provider is willing to pay to "buy" a patient. It may surprise you to learn that the provider is worried about being investigated for fraud. And it may surprise you to learn that the provider and the "runner" discuss lawsuits, attorneys, the number of times a patient can be treated, and whether an insurance company will pay for those treatments.

It may also surprise you to learn that the medical provider considers the payments he gives to the "runner," whether \$200, \$250, \$300, \$350, or more, to be part of his overhead, his cost of "doing business." Might this medical provider be thinking about his increasing overhead costs when deciding whether you should receive additional treatment or medical supplies, or when he is preparing bills to submit to your insurance company for payment?

When they study "tort" law, the law that governs automobile accident injuries and other types of negligent or intentional wrongs, law students are taught that, "for every injury there is a remedy," a right to a lawsuit. Similarly, there are some in New Jersey who believe that "runners" perform a valuable public service by simply advising people of their "rights." There are those who believe that "runners" do little more than advise people of their right to receive treatment paid by insurance proceeds and to file a lawsuit for "pain and suffering" following an auto-



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mobile accident. However, OIFP’s experience investigating and prosecuting “runners” suggests otherwise. OIFP’s experience suggests that “runners” do far more than merely advise people of their “rights.”

In New Jersey, “runners” commonly commit serious crimes. Among the crimes which “runners” in New Jersey commit are:

- paying bribes to police officers to write phony police reports;
- paying bribes to police officers to expedite police reports so the “runners” can quickly “recruit” people to become clients, patients, and insurance claimants;
- falsely adding people’s names to police reports and other records to reflect that they were involved in an automobile accident when, in fact, they were not;
- paying people to purposely cause, or become involved in real or fictitious auto accidents so they can treat and then submit phony insurance claims;
- intentionally causing real automobile accidents so as to ensure a steady stream of clients, patients, and insurance claimants;
- staging fictitious automobile accidents by reporting them to police as if they actually occurred, and by placing broken automobile parts on the street to make it appear as if an accident occurred;
- pressuring medical providers and lawyers by promising that, for a fee, they can produce a steady stream of clients, patients, and insurance claimants; and
- enticing people, who otherwise are not inclined to treat for minor injuries, to lie about their injuries, to treat for them, to consult with lawyers, to submit insurance Personal Injury Protection (PIP) claims, and to file lawsuits.

In perhaps one of the most shocking prosecutions involving “running” to date, a young man, who was not even a li-

censed chiropractor, owned, operated and controlled a string of New Jersey chiropractic clinics and employed the chiropractors who worked in the clinics. He allegedly also employed “runners” whom he paid to stage fictitious accidents, as well as real accidents, by actually crashing cars into innocent, unsuspecting drivers. His “runners” also recruited persons, including children, to be occupants of those cars, in order to produce a steady stream of patients for his chiropractic clinics. Automobile insurance companies were billed millions of dollars in claims through this illicit enterprise. As a result of OIFP’s investigation, however, he was eventually charged with a number of crimes, including racketeering and is awaiting trial.

It may also come as something of a surprise to learn that “runners” in New Jersey come from all walks of life. They are police officers and dispatchers, doctors and their office managers, private investigators, disbarred lawyers, ambulance drivers and other providers of medical transportation, and owners of medical supply businesses. Then, there are the others, those who engage in no other known occupation, trade, or profession other than that of being a “runner.” Many “runners” manage to develop significant “tax free” income by simply ensuring that attorneys and doctors have an endless stream of clients and patients covered by automobile insurance. Many “runners” even go so far as to obtain automobile insurance for those they recruit as patients and clients.

Other states have attempted to pass legislation outlawing “running,” albeit unsuccessfully. In Pennsylvania, lawyers were prohibited from paying referral fees for clients, but the Pennsylvania Supreme Court ruled that, because only the Pennsylvania Supreme Court has the legal authority to regulate the conduct of attorneys in the Commonwealth of Pennsylvania, the

Pennsylvania Legislature could not constitutionally pass a statute prohibiting lawyers from engaging in conduct which was tantamount to "running."

In Florida, a "runners" statute outlawing such conduct was declared unconstitutional because the statute did not require proof that the fraudulent claims were submitted in connection with the conduct constituting "running." Other states have attempted to regulate "running" by prohibiting the contacting of a prospective client, patient, or insurance claimant within a certain specified time period after the occurrence of an accident.

On July 12, 1999, the New Jersey Legislature addressed the serious problem of "running" and the adverse impact it has on the State's insureds and insurers by passing the "Criminal Use of Runners" statute. In New Jersey, it is now a crime for a person, for a pecuniary benefit, to procure or attempt to procure, a client, patient, or customer at the direction of, request of, or in cooperation with an attorney, health care professional, owner or operator of a health care practice or facility, if the purpose is to seek to obtain benefits under a contract of insurance or to assert a claim against an insured or an insurance carrier for providing professional services to the client, patient, or customer. The statute does, however, provide exceptions for authorized public advertising and for referrals otherwise authorized by law.

In contrast to the manner in which Florida attempted to prohibit the scourge of "running," the New Jersey Legislature unequivocally declared that the crime of "running" is complete, in and of itself, when there is proof beyond a reasonable doubt that a person knowingly acts as a "runner," or uses, solicits, directs, hires or employs another to act as a "runner." In New Jersey, additional proof of fraud, theft, forgery or similar criminal conduct, or of

a violation of a professional code of ethics is not required to prove the crime of criminal use of "runners."

Though the Legislature did not specifically so state when it passed the "Criminal Use of Runners" statute, the policy reasons underlying the "runners" statute are evident. Billions of dollars are spent each year on health care, includ-

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ing both general health insurance and the Personal Injury Protection (PIP) insurance coverage provided by automobile insurance policies to cover the costs of treatment for those injured in automobile accidents. It has been estimated that at least ten percent of these costs can be attributed to fraud. Many of those in the insurance industry who are familiar with the problem believe that the amount attributable to fraud is far greater.

That the criminal use of "runners" by medical providers and other professionals leads to insurance fraud is undeniable. More often than not, in its various manifestations, it results in overutilization of insurance benefits, including the ordering of unnecessary di-



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agnostic tests and courses of treatment of questionable medical validity, billing for professional medical services not rendered, and billing for more expensive professional medical services than those actually rendered, to mention but a few.

Among the more egregious types of fraud engendered by the use of “runners” are the staging of car accidents to create and maintain a ready pool of persons to become clients, patients, customers, and insurance claimants; the fabrication of “paper automobile accidents” by falsifying police accident reports; and the payment of bribes to police officers, police dispatchers, and other public officials to procure automobile accident reports as quickly as possible to recruit those listed in the reports as clients, patients, customers, and insurance claimants.

The integrity of the insurance delivery system requires that the professional judgments of doctors and lawyers remain trustworthy and impervious to corrupting outside influences. The offering of a pecuniary benefit to a “runner,” however, or the receiving of a pecuniary benefit by a “runner” to solicit prospective clients, patients, customers, or insurance claimants, adds “overhead” costs and provides a financial incentive in connection with a health insurance and personal injury insurance transaction that corrupts the professional judgment of providers.

The financial incentives paid to, or received by, “runners” often ultimately induce people who are not injured, or who are only slightly injured, to seek costly medical treatment when they would not have otherwise been inclined to do so. These corrupting financial incentives also frequently induce “runners” to engage in fraudulent conduct such as paying bribes, paying people to participate in staged or fictitious accidents, and, in some cases, causing automobile accidents by dangerous and reckless

driving that endangers innocent and unsuspecting motorists.

While many licensed providers, including attorneys, are subject to a code of ethics which limits or restricts professional relationships with “runners,” other professional providers are not subject to any professional code of ethics that would prohibit, limit, or otherwise restrict them from working with “runners.” Indeed, “runners” are often not licensed professionals, themselves, and, thus, are not subject to any code of professional ethics.

By enacting legislation criminalizing the use of “runners,” the New Jersey Legislature has enabled a more effective prosecution of criminally culpable persons who act as “runners,” and of medical providers or others who use “runners” in connection with their professional practices. Greatly empowered by the law against using “runners,” in 2003, OIFP returned indictments charging numerous persons with “running,” as well as with the related criminal conduct which is so frequently tied to “running,” such as the staging of automobile accidents and the filing of fraudulent PIP claims. Perhaps most importantly, in 2003, OIFP obtained convictions and prison sentences for persons who engaged in “running” and related criminal activities. These cases and others are detailed in the Insurance Fraud Case Highlights Section of this Report.

John J. Smith, Jr. is the First Assistant Insurance Fraud Prosecutor and assists the Insurance Fraud Prosecutor with all facets of the Office's operations including its investigations, criminal prosecutions and civil litigation. He is a 19 year veteran prosecutor with the Division of Criminal Justice.

